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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,780	07/11/2005	John L. Zenk	HUM254USPTO 2	1479
23403 7590 02/15/2008 SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205			EXAMINER ROGERS, JUNE MARIE	
			ART UNIT 1612	PAPER NUMBER
			MAIL DATE 02/15/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,780

Applicant(s)

ZENK, JOHN L.

Examiner

JUNE ROGERS

Art Unit

4173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 28, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

The response filed on November 28, 2007 have been received and entered into the application.

Terminal Disclaimer

The terminal disclaimer filed on November 28, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent No. 7, 199,116 has been reviewed and is accepted.

In response to the terminal disclaimer, the obviousness-type double patenting rejection has been withdrawn

Action Summary

The provisional rejection of claims 1-9 of record under 35 U.S.C. 101 as claiming the same invention as that of claims 1-9 of copending Application No. 10541781 is maintained. Applicant has noted this provisional rejection and has stated an appropriate response will be made once allowable subject matter is identified in the present application and the (781) application.

The rejection of claims 1-9 of record under 35 U.S.C 103(a) are being unpatentable over Partridge et al (U.S. Patent No. 5,296,481) in view of Serdula et al.

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(American Journal of Public Health 1994, Vol. 84, No.11) is maintained for the reasons stated in the previous office action.

The rejection of claims 1-9 of record under 35 U.S.C 102(b) as being anticipated by Kalman et al (Current Therapeutic Research, vol. 61, No. 7, 2000) is maintained for the reasons stated in the previous office action.

Response to Arguments--103 Rejections

Applicant's arguments filed November 11, 2007 have been fully considered but they are not persuasive. Applicant essentially argues Partridge et al does not teach, suggest, encourage or otherwise induce the consumption of 7-oxo-DHEA while dieting to lose weight. Additionally, Applicant argues Serdula et al. does not disclose, teach or suggest that persons responding to the survey were both consuming fewer calories and consuming a "special product", in an effort to lose weight.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Based on the combination of the references and the level of skill in the art utilizing 7-oxo-DHEA in combination with a reduction in caloric intake would be obvious because Serdula M et al. teaches that those who are trying to lose weight consume fewer calories as well as take special supplements to control their weight. Therefore, it

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would have been obvious to one of ordinary skill in the art, at the time of the invention, to administer the weight loss supplements taught Partridge, which are biologically effective for controlling weight gain and promoting weight loss, to a dieting person because dieters take special supplements to assist in control of their weight.

Response to Arguments--102 Rejections

Applicant's arguments filed November 11, 2007 have been fully considered but they are not persuasive. Applicant essentially argues Kalman et al. does not teach a method of weight loss but a method of weight maintenance because consumption of a 1,800 kcal/day diet is designed for weight maintenance and not weight loss.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. amount of caloric intake) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Kalman et al. clearly states that 7-oxo-DHEA combined with a reduced calorie diet significantly reduces body weight and fat (p.436, conclusion section) and therefore Kalman teaches weight loss. Additionally, it is well known in the art that the amount of calorie reduction needed to induce weight loss varies from person to person and is based on many factors such as normal amount of caloric intake, age, sex, activity level, and other factors such the presence or absence of certain diseases etc.

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It is noted that Applicant defines dieting as "eating and drinking sparingly to lose weight"; however, Applicant fails to define the range of calorie consumption which qualifies as "eating a drinking sparingly to lose weight."

In view of the above, Office Action of August 29, 2007 is deemed proper and asserted with full force and effect herein to obviate applicant's claims.

Conclusion

No claims allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

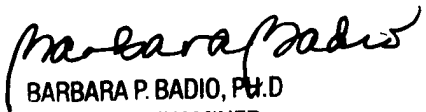
Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUNE ROGERS whose telephone number is (571)270-3497. The examiner can normally be reached on M-F 9-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fred Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Juné M. Rogers


BARBARA P. BADIO, Ph.D.
PRIMARY EXAMINER